

STATE OF MICHIGAN  
COURT OF APPEALS

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MORTON D. STEBBINS and STINGRAY  
SHORES, INC.,

UNPUBLISHED  
October 7, 2003

Plaintiffs-Appellees,

v

DICKINSON, WRIGHT, MOON, VAN DUSEN,  
& FREEMAN, and GREGORY L.  
MCCLELLAND,

No. 239814  
Genesee Circuit Court  
LC No. 00-069249-AV

Defendants-Appellants.

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Before: O’Connell, P.J., and Jansen and Fort Hood, JJ.

PER CURIAM.

Defendants appeal by leave granted from the circuit court’s order reversing the district court’s judgment of no cause of action and retention of the action in circuit court for retrial. We reverse the order of the circuit court and reinstate the district court judgment.

Defendants first allege that the circuit court erred by failing to apply the appropriate standard of review to the trial court’s findings of fact and conclusions of law regarding causation and damages. We agree. An appellate court reviews the findings of fact by a trial court sitting without a jury under the clearly erroneous standard. *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000). “A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been committed.” *Id.* A trial court’s conclusions of law are reviewed de novo. *Omnicom v Gianetti Investment Co*, 221 Mich App 341, 348; 561 NW2d 138 (1997). Application of an improper standard of review and misapplication of legal principles warrant reversal. See *Dignan v Michigan Public School Employees Retirement Board*, 253 Mich 571, 578; 659 NW2d 629 (2002).

The circuit court applied an abuse of discretion to the trial court’s factual findings and concluded that the trial court could not find a breach of fiduciary duty without entering a damage award. On the contrary, the trial court’s factual findings are reviewed for clear error. *Walters, supra*. Additionally, the circuit court’s conclusion that damages flowed from the breach of duty is without merit. Rather, the breach of duty and proof of damages are distinct elements of the cause of action. To support a claim based on tortious injury, a duty must be owed by the defendant toward the plaintiff, a breach of the duty must occur, there must be a proximate causal

relationship between the breach of duty and the plaintiff's injury, and the plaintiff must have suffered damages. *Stephens v Dixon*, 449 Mich 531, 539; 536 NW2d 755 (1995). "[I]n a tort action, the tortfeasor is liable for all injuries resulting directly from his wrongful act, whether foreseeable or not, provided the damages are the legal and natural consequences of the wrongful act, and are such as, according to common experience and the usual course of events, might reasonably have been anticipated." *Sutter v Biggs*, 377 Mich 80, 86; 139 NW2d 684 (1966). Remote, contingent, or speculative damages are not permissible. *Id.* The question of what damages are anticipated by the defendant present a question for the trier of fact. *Wendt v Auto-Owners Ins Co*, 156 Mich App 19, 21; 401 NW2d 375 (1986). Calculations must have some foundation in fact. *Marshall Lasser, PC v George*, 252 Mich App 104, 110; 651 NW2d 158 (2002). Based on the record, the trial court's conclusion, that plaintiff failed to demonstrate proximate causation and that any damage request for "loss of leverage" was speculative, was not clearly erroneous. *Walters, supra*. Based on the improper application of the standard of review and the misapplication of the law regarding the distinct elements of a tort claim, *Dignan, supra*, we reverse the order of the circuit court and reinstate the trial court's judgment.<sup>1</sup>

Reversed and remanded for reinstatement of the trial court's judgment. We do not retain jurisdiction.

/s/ Peter D. O'Connell  
/s/ Kathleen Jansen  
/s/ Karen M. Fort Hood

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<sup>1</sup> Because of our conclusion that reinstatement of the trial court's judgment is required, the issue of the circuit court's retention of the case for retrial is moot, and we do not address it. Lastly, we note that plaintiff raised the issue of the propriety of the amount of the award of mediation sanctions. A cross appeal was not filed regarding this issue, and it is not an issue that presents an alternative grounds for affirmance. See *Candelaria v B C General Contractors, Inc*, 236 Mich App 67, 83 n 6; 600 NW2d 348 (1999). Furthermore, we do not have the benefit of the district court record to determine if this issue was preserved for appellate court review. Therefore, we do not address it.